

1 **I. Factual and Procedural Background**

2 The present dispute arises out of real property located at
3 4134 Glasgow Drive, North Highlands, California ("Property").
4 Debtor Rizal Guevarra acquired an interest in the Property
5 pursuant to a July 2, 2014, grant deed which conveyed the
6 Property to the debtor and his nephew as joint tenants. The
7 debtor and his nephew subsequently encumbered the Property by a
8 May 27, 2016, deed of trust given as security for a loan. The
9 deed of trust also reflects that title to the Property is vested
10 in the debtor and his nephew as joint tenants.

11 The debtor filed the voluntary petition that commenced this
12 chapter 7 case on August 23, 2018. On the initial Schedule A/B,
13 the debtor valued the Property at \$217,612.00 and stated that the
14 value of the portion he owned was "\$0.00." In the space provided
15 for a description of the debtor's ownership interest appeared the
16 notation: "Co-signed for Nephew; Debtor has no interest in
17 property." The debtor also did not claim the Property or any
18 interest in it exempt on the initial Schedule C. In fact, the
19 debtor used the "wild card" exemption on the initial Schedule C
20 to exempt a \$22,306.20 Wells Fargo 401(k) bank account.

21 The debtor appeared at the § 341(a) creditors' meeting on
22 September 25, 2018, at which time he reaffirmed the accuracy of
23 the initial Schedules under oath. During the § 341(a) creditors'
24 meeting the debtor was also made aware of the chapter 7 trustee's
25 position that the debtor owned a 50% interest in the Property.

26 On October 11, 2018, the chapter 7 trustee filed a notice
27 for creditors to file proofs of claim. The notice was served on
28 the debtor and his attorney.

1 Approximately two weeks later, on October 25, 2018, the
2 chapter 7 trustee employed an attorney to assist with the sale of
3 the Property or the debtor's interest in it. Several weeks
4 later, on November 9, 2018, the chapter 7 trustee's attorney
5 again informed the debtor's attorney of the estate's position
6 that the debtor owned a 50% interest in the Property. A little
7 over a month later, on December 13, 2018, the chapter 7 trustee's
8 attorney sent the debtor's nephew a letter informing the nephew
9 that the debtor's 50% interest in the Property was property of
10 the bankruptcy estate and that the chapter 7 trustee intended to
11 "move to sell either [the debtor's] interest in the Subject
12 Property or the entire Subject Property." Several days later, on
13 December 19, 2018, the debtor's attorney sent the chapter 7
14 trustee's attorney a letter in which he stated that "the debtor
15 has no interest in the property."

16 Meanwhile, on August 20, 2019, the chapter 7 trustee filed
17 an adversary proceeding in which he sought to sell the Property
18 in its entirety. Having the good fortune to find a buyer for the
19 debtor's 50% interest, the chapter 7 trustee dismissed the
20 adversary proceeding and instead pursued a sale of the debtor's
21 interest in a motion filed on November 1, 2019.

22 The debtor opposed the sale motion on December 6, 2019. The
23 debtor filed an opposition which reiterated that he "is not the
24 owner of the subject property; he is merely a co-signer for his
25 nephew. Debtor has no interest in the property (see schedule A
26 that describes the property)."

27 The debtor repeated these assertions three days later, on
28 December 9, 2019, in a motion to convert the chapter 7 case to a

1 chapter 13 case. A declaration filed with the conversion motion
2 stated that the debtor is "not the owner of the property, [he is]
3 just a co-signer." The conversion motion similarly stated that
4 the debtor "is not the owner of the property, he is just a
5 co-signer. Debtor has no interest in the property as attested to
6 in Schedule A of the petition filed on August 23, 2018 (Doc 1).
7 The property belongs to debtor's nephew." At the same time-and
8 in what would appear to be the proverbial "Freudian slip"-the
9 conversion motion also stated that "[t]he reason for conversion
10 is because the Trustee is demanding \$32,000 to sell *Debtor's*
11 *portion (50%) interest in property listed in debtor's schedules*
12 *known as 4134 Glasgow Drive, North Highlands, CA.*" (Emphasis
13 added).

14 The sale motion was heard and granted the following day, on
15 December 10, 2019. Based on evidence that established that title
16 to the Property was vested in the debtor and his nephew as joint
17 tenants, the court ruled that the debtor held a 50% interest in
18 the Property and the interest was subject to sale. The order
19 granting the sale motion and approving the sale of the debtor's
20 50% interest to a third-party overbidder for \$32,500.00 was also
21 filed on December 10, 2019. The debtor did not appeal the sale
22 order.

23 Over a year and a half after the initial Schedules were
24 filed, after the debtor testified to their accuracy, and after
25 the debtor was informed that the trustee considered his 50%
26 interest in the Property an asset of the bankruptcy estate; over
27 a year after the debtor first represented that the interest had
28 no value and, in any case, he did not own or have an interest in

1 the Property; and after the chapter 7 trustee incurred sale-
2 related expenses in excess of \$12,000.00, on March 18, 2020, the
3 debtor filed amended Schedules A/B and C in which he claimed an
4 interest in the Property and claimed the proceeds from the sale
5 of the interest exempt under California's "wild card" exemption.
6 The debtor valued his interest in the Property at \$32,500.00 in
7 amended Schedule A/B. In the space of amended Schedule A/B for
8 describing the nature of the debtor's ownership interest in the
9 Property, the debtor wrote: "Debtor interest in said property it
10 [sic] was sold for \$32,500.00 by chapter 7 trustee[.]" Under
11 "Other information you wish to add," the debtor wrote: "Debtor
12 claims said funds under exemption statute CCP 703." On amended
13 Schedule C, the debtor added the \$32,500.00 sale proceeds and
14 claimed \$27,915.00 exempt under California's "wild card"
15 exemption. In so doing, the debtor changed his initial Schedule
16 C "wild card" exemption from the Wells Fargo 401(k) bank account.

17 The chapter 7 trustee objected to the debtor's claim of
18 exemption on March 30, 2020. The chapter 7 trustee asserted that
19 the debtor had not acted in good faith and was equitably estopped
20 from asserting an exemption in the sale proceeds. The chapter 7
21 trustee also asserted that if he had known that the debtor would
22 exempt the sale proceeds he would not have sold the debtor's 50%
23 interest and incurred the expense of selling the interest in the
24 first instance.

25 The debtor filed an opposition to the chapter 7 trustee's
26 objection on April 21, 2020. The opposition stated that the
27 debtor did not act in bad faith. It also stated that the debtor
28 changed his exemption after the court ruled during the sale

1 motion hearing that he owned a 50% interest in the Property.

2 Addressing only the bad faith issue, in a memorandum and
3 order filed on June 1, 2020, the court sustained the chapter 7
4 trustee's objection on the basis of bad faith. The debtor timely
5 appealed the decision on June 12, 2020.

6 The Bankruptcy Appellate Panel for the Ninth Circuit heard
7 the debtor's appeal on March 18, 2021, and issued an unpublished
8 memorandum decision on March 29, 2021. Guevarra v. Whatley (In
9 re Guevarra), 2021 WL 1179619 (9th Cir. BAP March 29, 2021). The
10 memorandum decision reaffirms that a debtor as an exemption
11 claimant bears the burden of proof on a California exemption,
12 confirms that state-created exemptions are governed by state law
13 which includes equitable law, recognizes that an exemption
14 created under California law may be disallowed on state law
15 equitable grounds, and states that equitable grounds for
16 disallowing an exemption may include equitable estoppel.
17 Nevertheless, finding bad faith inapplicable to the "wild card"
18 exemption, the memorandum decision vacated this court's June 1,
19 2020, memorandum and order and remanded with instructions for
20 this court to consider whether the debtor's "wild card" exemption
21 may be disallowed on California state law equitable estoppel
22 grounds. The court now proceeds to do so.

23 24 **II. Legal Standards**

25 Generally, when a debtor files bankruptcy all of the
26 debtor's property becomes property of the bankruptcy estate. See
27 11 U.S.C. § 541. Federal law provides avenues for a debtor to
28 exempt certain property. See 11 U.S.C. § 522(d). Congress has

1 also authorized states to opt out of the federal bankruptcy
2 exemptions created by § 522(d) which means the federal exemption
3 scheme can be supplanted by states that choose to provide their
4 own exemptions. See 11 U.S.C. § 522(b)(2); Granger v. Watson (In
5 re Granger), 754 F.2d 1490, 1492 (9th Cir. 1985) (“[A] state that
6 has opted out has considerable freedom in creating exemptions and
7 eligibility requirements for those exemptions.”). California
8 exercised the § 522(b)(2) option to opt out. See Cal. Code Civ.
9 Proc. § 703.130.

10 A bankruptcy court construing a California exemption applies
11 a state-law rule of decision. In re Tallerico, 532 B.R. 774, 780
12 (Bankr. E.D. Cal. 2015).³ In other words, “[l]ike all federal
13 courts when addressing a state-law rule of decision, the
14 bankruptcy court is predicting what the California Supreme Court
15 would rule if it were presented with the question.” Id. In that
16 endeavor, state law governs because “when a debtor claims a
17 *state-created* exemption, the exemption’s scope is determined by
18 state law[.]” Law, 571 U.S. at 425 (emphasis in original); Wolfe
19 v. Jacobson (In re Jacobson), 676 F.3d 1193, 1199 (9th Cir.
20 2012); Philips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th
21 Cir. 2018).

22 State law includes state statutory law. Elliott v. Weil (In
23 re Elliott), 523 B.R. 188, 194 (9th Cir. BAP 2014); Kornhauser v.
24 Block (In re Block), 2016 WL 3251406 at *3 (9th Cir. BAP June 3,

25
26 ³28 U.S.C. § 1652 also states: “The laws of the several
27 states, except where the Constitution or treaties of the United
28 States or Acts of Congress otherwise require or provide, shall be
regarded as rules of decision in civil actions in the courts of
the United States, in cases where they apply.”

1 2016). It also includes state equitable law. Gilman, 887 F.3d
2 at 966 (citing (Gray v. Warfield (In re Gray), 523 B.R. 170, 175
3 (9th Cir. BAP 2014)); see also Guevarra, 2021 WL 1179619 at *4.

4 Equitable estoppel is an equitable basis under California
5 law on which a state-created exemption may be disallowed. Parker
6 v. Smith (In re Smith), 2017 WL 1457942 at *4-*5 (9th Cir. BAP
7 April 24, 2017); see also In re Gonzalez, 2017 WL 2787594 at *7
8 (Bankr. C.D. Cal. June 27, 2017) (disallowing a tools of trade
9 exemption under Cal. Code Civ. Proc. § 704.060(a)(1) on the basis
10 of equitable estoppel); In re Aubry, 558 B.R. 333 (Bankr. C.D.
11 Cal. 2016) (disallowing a settlement annuity exemption under Cal.
12 Code Civ. Proc. § 703.140(b)(10)(C) on the basis of equitable
13 estoppel); In re Martinez, 2016 WL 7338405 at *4-*7 (Bankr. E.D.
14 Cal. Dec. 15, 2016) (applying equitable estoppel analysis to a
15 "wild card" exemption under Cal. Code Civ. Proc. § 703.140(b)(5)
16 but finding it inapplicable based on the particular facts of the
17 case).

18 Under California law, a party asserting equitable estoppel
19 must establish the following: (a) a representation or concealment
20 of material facts (b) made with knowledge, actual or virtual, of
21 the facts (c) to a party ignorant, actually and permissibly, of
22 the truth (d) with the intention, actual or virtual, that the
23 ignorant party act on it, and (e) that party was induced to act
24 on it. Simmons v. Ghadari, 44 Cal.4th 570, 584 (2008); Behnke v.
25 State Farm Gen. Ins. Co., 196 Cal.App.4th 1443, 1462 (2011)
26 (quotation omitted); see also Lua v. Miller, 629 Fed.Appx. 851,
27 852 (9th Cir. June 27, 2017) (applying California law).

III. Analysis

A.

Concealment of a Material Fact

By claiming the proceeds from the sale of his interest in the Property exempt under the "wild card" exemption the debtor implicitly acknowledges that the interest could have also been exempted under Cal. Code Civ. Proc. § 703.140(b)(5). See generally, Orange County's Credit Union v. Garcia (In re Garcia), 707 F.3d 861, 864 (9th Cir. 2013) (holding that the "wild card" exemption is applicable to "any" property and "[A]ny" means any up to the statutory amount). Indeed, proceeds are a conversion of an exempt asset at least when disposition of the asset is involuntary. See Langley v. Finnall, 2 Cal.App. 231, 233 (1905). Also noteworthy is that the chapter 7 trustee objects to the debtor's "wild card" exemption claimed in the sale proceeds on the basis of the debtor's conduct and not on the basis that exemption is improper under-or outside the scope of-the "wild card" exemption.

The debtor concealed the "wild card" exemption otherwise available to exempt his interest in the Property. He did so by omitting the exemption from the initial Schedules and thereafter testifying at the § 341(a) meeting that the initial Schedules were accurate. See Aubry, 558 B.R. at 346.⁴

⁴The court is mindful that on remand from Gilman, 887 F.3d 956, the bankruptcy court construed the Ninth Circuit's Lua decision to mean that "the Court of Appeals essentially held that a debtor's schedules can not form the basis of an equitable estoppel claim because the parties are aware that the debtor may amend her schedules at any time." In re Gilman, 608 B.R. 714, 729 (Bankr. C.D. Cal. 2019), *aff'd sub nom.*, Tuxton China, Inc.

1 In correspondence, and in documents and declarations filed
2 during the case, the debtor repeatedly told the chapter 7 trustee
3 that his interest in the Property had no value and, in any case,
4 he did not own or have an interest in the Property. In so doing,
5 and in not so many words, the debtor essentially told the chapter
6 7 trustee that his interest in the Property was either not worth
7 exempting or that it was not exempt. Indeed, what debtor would
8 waste an exemption on a valueless asset? More important, what
9 debtor could exempt property that he or she does not own or have
10 an interest in? See In re Scotti, 456 B.R. 760, 763 (Bankr.
11 D.S.C. 2011) (“[I]n order to exempt property, not only must the
12 property be part of the bankruptcy estate under § 541, the debtor
13 claiming the exemption must own the property, or have an interest
14 in the property.” (Quotation omitted)).”

15 Concealment of the exemption is also material. The amended
16 Schedule A/B values the debtor’s interest at \$32,500.00 and the
17 exemption at \$27,915.00. That makes the exempted proceeds by far
18 the debtor’s most valuable asset inasmuch as it comprises over
19 40% of the debtor’s assets which, valued on amended Schedules A/B
20 and C, total \$80,881.20. Underscoring this materiality is that
21 in the initial Schedule A/B the debtor valued his interest in the
22 Property at \$0.00, which is not the true value of the asset.

23 B. Made With Knowledge of the Facts

24 The 2014 grant deed and the 2016 deed of trust provided the
25

26 v. The Oneida Grp. Inc. (In re Gilman), 2020 WL 7087703 (C.D.
27 Cal. Oct. 28, 2020), *appeal docketed*, No. 20-56279 (9th Cir. Dec.
28 2, 2020). Here, however, concealment extends well beyond the
initial Schedules as discussed infra.

1 debtor with notice of the nature and extent of his interest in
2 the Property. The conversion motion demonstrates that the debtor
3 was aware of both inasmuch as it describes the interest as the
4 "Debtor's portion (50%) interest[.]"

5 Also noteworthy is that the conversion motion was filed to
6 prevent the chapter 7 trustee from selling the debtor's interest
7 by placing the Property under the debtor's exclusive control in a
8 chapter 13 case. See 11 U.S.C. §§ 1303, 1306(a). The conversion
9 motion thus demonstrates that the debtor knew before his interest
10 was sold that he could extricate the interest from the chapter 7
11 estate much in the same manner as if it were exempted. That the
12 debtor sought to use the conversion motion as a *de facto* "wild
13 card" exemption without actually (and legitimately) claiming the
14 exemption is further indica of knowledge and concealment.

15 C.

16 To a Party Ignorant of the Truth

17 The chapter 7 trustee did not know that the debtor would
18 exempt the sale proceeds after the debtor's interest was sold.
19 How could he? By repeatedly telling the chapter 7 trustee that
20 the interest was a valueless non-exempt asset the debtor
21 essentially assured the chapter 7 trustee that he could safely
22 administer the interest as asset of the chapter 7 estate. See 11
23 U.S.C. § 704(a) (1).

24 The chapter 7 trustee's course of conduct also demonstrates
25 that he was not aware that the debtor would exempt the sale
26 proceeds after the debtor's interest was sold. No reasonable
27 trustee would incur the expense of selling an asset knowing that
28 the debtor will exempt the sale proceeds. In other words, no

1 reasonable trustee would knowingly sell an exempt asset
2 exclusively for a debtor's benefit.⁵

3 In reaching this conclusion, the court notes several
4 distinctions on this element between this case and the Ninth
5 Circuit's unpublished Lua decision.

6 The bankruptcy court in Lua applied California equitable
7 estoppel law to disallow the debtor's homestead exemption which
8 the debtor claimed in the initial schedules she filed with her
9 petition. In re Lua, 529 B.R. 766, 768 (Bankr. C.D. Cal. 2015).
10 The debtor then filed first amended schedules in which she
11 disavowed any interest in the residence except for a community
12 property interest for purposes of a divorce from her non-debtor
13 husband which eliminated the homestead exemption. Id. Relying
14 on the elimination of the homestead exemption, the trustee spent
15 significant time and incurred significant expenses marketing and
16 selling the debtor's residence. Id. at 769-71. Some three years
17 after the case was filed, thirty-three months after the first
18 amended schedules were filed and after much investigation,
19 significant litigation, the retention of a broker and an
20 agreement with the debtor's non-debtor ex-husband to sell the
21 residence, the debtor filed second amended schedules in which she
22 asserted a community interest and an exemption in the residence.
23 Id. at 771. The trustee objected asserting bad faith, estoppel,

24
25 ⁵The court is familiar with the chapter 7 trustee appointed
26 in this case. He has made numerous appearances before the
27 undersigned judge. He is professional and knowledgeable. He
28 understands and appreciates the role of a chapter 7 trustee.
Therefore, to reiterate, the court does not believe that the
chapter 7 trustee sold the debtor's interest in the Property
knowing that the debtor would exempt the sale proceeds.

1 and laches as grounds to disallow the amended homestead
2 exemption. Id. The bankruptcy court sustained the trustee's
3 objection and disallowed the debtor's amended homestead exemption
4 on California law equitable estoppel grounds. Id. at 779.

5 The district court affirmed the bankruptcy court's decision.
6 Lua v. Miller (In re Lua), 551 B.R. 448 (C.D. Cal. 2015).

7 The Ninth Circuit reversed in an unpublished memorandum
8 decision. Lua, 692 Fed.App'x. 851. In so doing, the Ninth
9 Circuit reasoned that the trustee could not legitimately rely on
10 the debtor's assertion in the first amended schedules that she
11 held no interest in the property when the trustee knew that the
12 debtor had earlier claimed a homestead exemption in the initial
13 schedules and should have also known that schedules are subject
14 to amendment at any time under Bankruptcy Rule 1009(a) if
15 circumstances changed as they did. Id. at 852-53. And it is in
16 these regards that there are significant factual distinctions
17 between this case and Lua.

18 First, as noted above, equitable estoppel in this case is
19 not based solely on or limited to a concealment in the Schedules.
20 It is based on concealment that occurred repeatedly throughout
21 the case before the debtor's interest was sold.

22 Second, unlike Lua where the trustee had notice from prior
23 schedules that the debtor may further amend the schedules to re-
24 claim a previously-claimed exemption if circumstances changed,
25 here, the trustee had no such notice. In fact, how could the
26 chapter 7 trustee anticipate that the debtor would amend the
27 Schedules to exempt proceeds from the sale of an asset that the
28 debtor repeatedly assured the chapter 7 trustee had no value and

1 was not exempt? Also recall that the "wild card" exemption was
2 already used to exempt the Wells Fargo 401(k) bank account. That
3 too lends itself to a lack of notice that the Schedules would
4 later be amended to use the same exemption to exempt proceeds
5 from the sale of a different asset. See In re Gonzalez, 620 B.R.
6 296, 319-20 (Bankr. C.D. Cal. 2019).

7 Third, unlike Lua, there are no changed circumstances. The
8 debtor's opposition to the chapter 7 trustee's objection to the
9 claim of exemption states that the debtor changed his exemption
10 only after the court ruled that he had a 50% interest in the
11 Property. Technically, that is correct insofar as the amended
12 Schedule C followed the sale order by some three months.
13 However, the debtor's statement is not entirely accurate when
14 viewed in its proper context.

15 The grant deed and the deed of trust which vested title to
16 the Property in the debtor and his nephew as joint tenants pre-
17 date the petition and, thus, were known to the debtor when the
18 petition was filed. The conversion motion in which the debtor
19 effectively acknowledged his 50% interest in the Property also
20 preceded the court's ruling on the sale motion. The debtor was
21 therefore aware of his 50% interest in the Property *before* the
22 court ruled that he held that interest in the course of granting
23 the sale motion. The debtor was also aware that he could exempt
24 the interest-or obtain a functionally equivalent result by
25 removing it from the chapter 7 estate without calling the
26 extrication an exemption-before the sale motion was heard and
27 determined.

28 The point here is that the debtor had the requisite

1 knowledge of the nature and extent of his interest in the
2 Property as well as knowledge that would have allowed him to
3 exempt the interest *before* the court ruled in the context of the
4 sale motion that the debtor held a 50% interest subject to sale.
5 So in reality the court's ruling on the sale motion changed
6 nothing from the debtor's perspective. The changed circumstance
7 found to be critical in Lua to support an exemption in amended
8 schedules do not exist here.

9 If anything, the facts of this case more closely align with
10 Aubry, 558 B.R. at 345-50. In Aubry, the debtor was equitably
11 estopped under California law from claiming an exemption in a
12 settlement annuity. The debtor failed to claim the annuity in
13 her original Schedules, testified that her Schedules were
14 accurate, and valued the annuity at \$0.00 in first amended
15 schedules. The trustee relied upon debtor's decision to wait a
16 year to amend her schedules by incurring over \$11,000.00 in
17 attorney's fees without any knowledge or indication that the
18 debtor would file second amended schedules to exempt the annuity.

19 D.

20 With the Intention That the Party Act on It

21 Intent does not require intent to deceive and it need not be
22 fraudulent. Aubry, 558 B.R. at 349 (citing California
23 decisions). It is sufficient if the debtor had an opportunity to
24 act and thereby prevent adverse consequences to another party but
25 remained silent and failed to do so. Id. at 350 (citing
26 California decisions). That is precisely what occurred here.

27 From communications regarding the chapter 7 trustee's intent
28 to sell the debtor's interest in the Property at the inception of

1 the case, to the employment of an attorney to sell the interest,
2 to the filing of an adversary proceeding to sell the entire
3 Property, and ultimately the filing of a noticed motion to sell
4 the debtor's interest there were ample opportunities for the
5 debtor to properly exempt his interest in the Property. And yet
6 he failed to do so at any of these critical points. Instead, in
7 the face of each of these critical developments in the case, all
8 of which undeniably signaled the chapter 7 trustee's intent and
9 opportunity to sell the debtor's interest in the Property, the
10 debtor remained steadfastly silent and claimed no exemption.

11 E.

12 That Party was Induced to Act on It

13 The debtor's concealment of what amounts to a known
14 exemption caused the chapter 7 trustee to incur significant sale-
15 related expense in the course of administering the asset that
16 generated the proceeds the debtor now claims are exempt. The
17 proceeds are insufficient to pay the costs of sale and the
18 exemption. The exemption is therefore prejudicial.

19
20 IV.

21 **Conclusion**

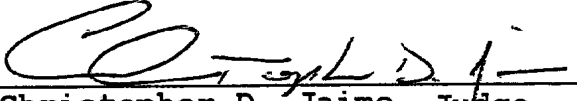
22 Based on the foregoing, the court will disallow the debtor's
23 "wild card" exemption claimed in the proceeds the estate received
24 upon the sale of the debtor's 50% interest in the Property. The
25 chapter 7 trustee's objection is therefore **SUSTAINED** on the basis
26 of equitable estoppel under California law. The debtor's "wild
27 card" exemption is **DISALLOWED**.

28 Based on this memorandum decision, the hearing on June 8,

2021, at 9:30 a.m. will be **VACATED**.

A separate order will issue.

Dated: June 07, 2021


Christopher D. Jaime, Judge
United States Bankruptcy Court

INSTRUCTIONS TO CLERK OF COURT**SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

T. Mark O'Toole
1006 H Street
Modesto CA 95354

Barry H. Spitzer
980 9th Street, Suite 380
Sacramento CA 95814